IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2767 OF 2004

M/s.Hindustan Consultancy &
Services Ltd.....Petitioners

Versus

The Jolly Maker Apt. I Premises
Co-operative Society Ltd.....Respodnent

Mr.A.S.Desai, for the Petitioner
Mr.Y.R. Naik, for the Respondent

CORAM: F.I. REBELLO, J.
DATE : 15th October,2004

P.C.:

1. Respondent society has two types of parking spaces (1) closed car parking space which has been purchased by the members; and (2) open car parking places. The petitioner is a member, who does not have a closed car parking space. The society passed a resolution in respect of allotment of open car parking places. The norms are set out in paragraph 11 of the order of the Appellate Authority.

2. It is the contention of the petitioner that those who have closed car parking spaces should not be eligible and entitled to be considered for the open car parking places. There are only 37 open car parking places. The submission raised on behalf of the petitioner is that considering that those members who have closed car parking space have already been secured and in these circumstances considering the Co-operative endeavour behind Co-operative Society, open car parking spaces should be left to the benefits of those who do not have a closed car parking space.

3. There is no dispute that the car parking spaces are common facilities. The question then would be whether in respect of common facilities the resolution as passed by the respondent would be contrary to law. The trial Court found in favour of the petitioner and set aside the resolution. The Appellate Authority by judgment and order dated July 2, 2004 reversed the said judgment and found that the norms fixed by the society for allowing car parking places is equitable. It is this order which is the subject matter of the present challenge.

4. Having considered the arguments on behalf of the parties, in my opinion the order of the Appellate Authority does not suffer from any error apparent on the face of the record. Once it is an accepted position that the open car parking spaces are common facilities no member of the society can be denied the right to exercise his right to the car parking space. It is in that context that the society fixed norms so that the open car parking places are given in rotation to the members as per the norms. To my mind the norms fixed are equitable and in tune with the policy that the common facilities are to be enjoyed by all the members of the society. For the aforesaid reasons no interference called for. Petition rejected.

(F.I.REBELLO, J.)